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SEP 27 2007

OFFICE OF PETITIONS

In re Application of
Keane et al.
Application No. 10/807,555
Filed: March 23, 2004
Attorney Docket No. P-4461/2 RI

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed September 17, 2007.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due, which was mailed April 13, 2007. The Notice of Allowance and Issue Fee Due and the Notice of Allowability set a three (3) month period for reply. Extensions of time were not available under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on July 14, 2007. A Notice of Abandonment was mailed on August 15, 2007.

Petitioner asserts that the Notice of Allowability mailed April 13, 2007 was never received. Petitioner has also provided a docket report.

A review of the record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office

action was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice of Allowance and Fee(s) Due was not in fact received. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Notice of Allowance and Fee(s) Due may have been lost after receipt rather than a conclusion that the Notice of Allowance and Fee(s) Due was lost in the mail.

Petitioner's argument has been considered but it is not convincing to establish the holding of abandonment should be withdrawn. The Notice of Allowance and Fee(s) due was mailed on April 13, 2007 to the correspondence address of record (Becton Dickinson & Company). It is not clear that the docket records provided are from Becton, Dickinson and Company. Further review also shows that it does not appear that petitioner has been authorized to prosecute the above-identified application. Nor does petitioner appear to work out of the address associated with correspondence address of record. Thus, the statement that the records were reviewed and the Notice of Allowance was not received is not persuasive.

Further, to the extent the correspondence address of record is no longer a valid address due to revocation of power of attorney, or unchanged address, (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence allow for withdrawing the holding of abandonment.

There is no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation and change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Petitioner may desire to submit a petition under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300

By delivery service:

(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
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Telephone inquiries concerning this matter should be directed to the undersigned at
(571) 272-3215.



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